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Supreme Court of the United States

OCTOBER TERM, 1955

No. 643

PAUL DEEMER JOHNSTON AND JOHN SOKOL,
PETITIONERS,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 31, 1956
CERTIORARI GRANTED MARCH 5, 1956

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[fol. 1]

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 11,620

UNITED STATES OF AMERICA, Appellant,

v.

PAUL DEEMER JOHNSTON, Appellee

No. 11,621

UNITED STATES OF AMERICA, Appellant,

v.

JOHN SOKOL, Appellee

Joint Appendix

[fol. 2] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal No. 17879

THE UNITED STATES

vs.

JOHN SOKOL

W. Wilson White, Esq.
Michael Hahalyak, Esq.
(403 Commonwealth Bldg.
Pittsburgh 22, Pa.)

DOCKET ENTRIES

1954

July 20. True Bill.
July 20. Motion and Order for Bench Warrant filed. Bench Warrant exit.

1954

Sept. 17. Bench Warrant returned by U. S. Commissioner, Pittsburgh, Penna., with transcript attached and filed.

Sept. 17. Bond of J. Sokol in $1,000 with surety filed.

[fol. 3] Nov. 5. Appearance of Michael Hahalyak, Esq., for defendant, filed.

Nov. 5. Plea: Not Guilty.

Nov. 5. Motion to dismiss indictment filed.

Dec. 20. Argued sur motion to dismiss, C. A. V.

1955

Mar. 15. Stipulation of counsel pertaining to venue filed.

Mar. 17. Opinion, Ganey, J., allowing motion to dismiss indictment for lack of jurisdiction filed. (=17804).

Mar. 18. Order of Court dismissing indictment filed. 3/21/55 Noted. (Copies mailed to counsel).

April 15. Government's Notice of Appeal filed.

April 15. Copy of Clerk's Notice to U. S. Court of Appeals (statement of docket entries) filed.

[fol. 4] In the United States District Court for the Eastern District of Pennsylvania

Criminal No. 17804

The United States

vs.

Paul Deemer Johnston

W. Wilson White, Esq.
Michael Hahalyak, Esq.
(403 Commonwealth Bldg.
Pittsburgh 22, Pa.)

Docket Entries

1954

May 25. True Bill.

June 23. Motion and Order for Bench Warrant filed. Bench Warrant exit.

1954

Aug. 26. Transcript of Commissioner's record received from Western District of Pennsylvania filed.

Aug. 26. Bond of defendant in $500.00 filed (cash security posted at Pittsburgh, Pa.)

[fol. 5] Nov. 5. Appearance of Michael Hahalyak, Esq., for defendant filed.

Nov. 5. Plea: Not Guilty.

Nov. 5. Motion to dismiss indictment filed.

Dec. 20. Argued sur motion to dismiss. CAV.

1955

Mar. 15. Stipulation pertaining to venue filed.

Mar. 17. Opinion, Ganey, J., allowing defendant's motion to dismiss for lack of jurisdiction filed.

Mar. 18. Order of Court dismissing Indictment filed. 3/21/55 Noted. (Copies mailed to counsel).

April 15. Government's Notice of Appeal filed.

April 15. Copy of Clerk's Statement of Docket Entries filed.

[fol. 6] In the United States District Court for the Eastern District of Pennsylvania

[Title omitted]

Indictment, Sokol Case—July 19, 1954

The Grand Jury Charges:

That on or about April 1, 1954, in the Eastern District of Pennsylvania, John Sokol, being a male person subject to the rules and regulations of the Selective Service Act of 1948, as amended by the Universal Military Training and Service Act and the rules and regulations made pursuant thereto, did knowingly neglect to perform a duty imposed upon him by the provisions of the said Act in [fol. 7] that he failed to report to the Philadelphia State Hospital, Roosevelt Boulevard and Southampton Road, Philadelphia, Pennsylvania, for assignment to perform civilian work contributing to the maintenance of the national

health, safety or interest, in lieu of induction; in violation of Title 50 Appx. Secs. 456(j) and 462.

True Bill.

E. Price Burnham, Foreman.

W. Wilson White, United States Attorney, by G. Clinton Fogwell, Assistant U. S. Attorney.

July 19, 1954.

[fol. 8] In the United States District Court, Eastern District of Pennsylvania

[Title omitted]

Indictment, Johnston Case

The Grand Jury C... rges:

That on or about November 30, 1953, at Norristown, Pennsylvania, in the Eastern District of Pennsylvania, Paul Deemer Johnston, being a male person subject to the rules and regulations of the Selective Service Act of 1948, as amended by the Universal Military Training and Service Act and the rules and regulations made pursuant thereto, did knowingly neglect to perform a duty imposed upon [fol. 9] him by the provision of said Act in that he failed and refused to obey an order of Local Board 87, New Castle, Pennsylvania, directing him to report for employment at Norristown State Hospital, Norristown, Pennsylvania, and to remain employed there for twenty-four consecutive months in violation of Title 50, U. S. C. Appx., Sections 456 and 462, as amended.

True Bill.

E. Price Burnham, Foreman.

W. Wilson White, United States Attorney, by G. Clinton Fogwell, Jr., Assistant United States Attorney.

[fol. 10] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

MOTION TO DISMISS, SOKOL CASE—Filed November 5, 1954

The defendant, John Sokol, by his attorney, Michael Hahalyak, moves that the indictment be dismissed on the following grounds:

1. The Court is without jurisdiction over the person of defendant.
2. The offense, if any, is cognizable only in The District Court for the Western District of Pennsylvania.
3. That the burdens imposed upon the defendant are such that would constitute a violation of procedural due process under the United States Constitution, in the event that defendant would be subject to jurisdiction.

(S.) Michael Hahalyak, 403 Commonwealth Building, Pittsburgh 22, Pa.

[fol. 11] IN THI UNITED STATES DISTRICT COURT FOR THE EASTE..N DISTRICT OF PENNSYLVANIA

[Title omitted]

MOTION TO DISMISS, JOHNSTON CASE—Filed November 5, 1954

The defendant, Paul Deemer Johnston, by his attorney, Michael Hahalyak, moves that the indictment be dismissed on the following grounds:

1. The Court is without jurisdiction over the person of defendant.
2. The offense, if any, is cognizable only in the District Court for the Middle [sic] District of Pennsylvania.
3. That the burdens imposed upon the defendant are such that would constitute a violation of procedural due process under the United States Constitution in the event that defendant would be subject to jurisdiction.

Michael Hahalyak, 403 Commonwealth Building, Pittsburgh 22, Pa.

[fol. 12] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

STIPULATION PERTAINING TO VENUE, SOKOL CASE—Filed March 15, 1955

The parties in the above proceeding stipulate to the following facts pertaining to venue in order to permit the Court to dispose of defendant's motion to dismiss the indictment charging defendant with violation of the Universal Military Training and Service, in failing to obey the order requiring the defendant to report for work, on the ground that this Court lacks jurisdiction over the defendant:

1. Defendant registered with the local draft board situate in the western judicial district of Pennsylvania.

2. Defendant at all times resided in the western judicial district of Pennsylvania.

[fol. 13] 3. The local board classified defendant 1-O (conscientious objectors) as his final classification.

4. Pursuant to said classification the local draft board in accordance with the Selective Service regulations notified defendant by mail (Form SSS 153) in the western judicial district of Pennsylvania to report to it for assignment of civilian work in lieu of induction.

5. On March 22, 1954, defendant personally reported to his local board as requested in SSS Form 153. At said time defendant personally refused to accept the local board's order to report to the Philadelphia State Hospital in Philadelphia on the ground that he was a minister of the gospel and could not partake in any branch of the service.

6. Defendant never physically entered the eastern judicial district of Pennsylvania to report for or to perform the work assigned to him.

Michael Hahalyak, Attorney for Defendant; W. Wilson White, United States Attorney.

[fol. 14] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Title omitted]

STIPULATION PERTAINING TO VENUE, JOHNSTON CASE—Filed March 15, 1955

The parties in the above proceeding stipulate to the following facts pertaining to venue in order to permit the Court to dispose of defendant's motion to dismiss the indictment charging defendant with violation of the Universal Military Training and Service, in failing to obey the order requiring the defendant to report for work, on the ground that this Court lacks jurisdiction over the defendant:

1. Defendant registered with the local draft board, situate in the western judicial district of Pennsylvania.

2. Defendant at all times resided in the western judicial district of Pennsylvania.

[fol. 15] 3. The local board classified defendant 1-O (conscientious objectors) as his final classification.

4. Pursuant to said classification the local draft board in accordance with the Selective Service regulations notified defendant by mail (Form SSS 153) in the western judicial district of Pennsylvania to report to it for assignment of civilian work in lieu of induction.

5. Defendant personally reported to his local draft board in the western judicial district of Pennsylvania in accordance with the instructions noted in SSS Form 153. He was instructed to report to the Norristown State Hospital, Norristown, Pennsylvania, on November 30, 1953. Defendant personally refused to accept said work. He also filed with the local board a statement in which he informed the board that he could not conscientiously accept the work assigned to him for the reasons more fully stated in his file.

6. Defendant never physically entered the eastern judicial district of Pennsylvania to report for or to perform the work assigned to him.

Michael Hahalyak, Attorney for Defendant; W. Wilson White, United States Attorney.

[fol. 16] IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Criminal No. 17,804

UNITED STATES OF AMERICA

v.

PAUL DEEMER JOHNSTON

Criminal No. 17,879

UNITED STATES OF AMERICA

v.

JOHN SOKOL

IX

OPINION—Filed March 17, 1955

GANEY, J.:

Each of the defendants' motion to dismiss the indictment against him raises the troublesome question of venue-jurisdiction. Defendants were indicted for knowingly neg-[fol. 17] lecting to perform a duty imposed upon them pursuant to the provisions of the Universal Military Training and Service Act of 1948, 62 Stat. 604, as amended, 50 U. S. C. A. Appendix, § 451 et seq.

The defendant, Paul Deemer Johnston, resided in the Western District of Pennsylvania. He registered under the Act with his local draft board in that district, and throughout his selective proceedings he dealt only with selective service personnel there. He was finally given a I-O classification as a conscientious objector, which entitled him to perform two years of civilian work contributing to the national health in lieu of his being inducted into the armed forces. Subsequently the local board, in accordance with Selective Service regulations, notified him by mail in the western judicial district of Pennsylvania to report to it for the assignment of civilian work. He was instructed to report to the Norristown State Hospital located in the Eastern District of Pennsylvania, the judicial district of this court, on November 30, 1953. At the time of the as-

signment, he personally notified the board of his refusal to accept such employment. He has not entered this district to report for the assigned work.

The story of the other defendant, John Sokol, is parallel to that of defendant Johnston.

On the assumption that when the omission to perform a duty constitutes a crime, the venue is in the judicial district in which the duty should have been performed, the Government indicted the defendants in this district.[1] [fol. 18] Our problem, as in United States v. Anderson, 328 U. S. 699, 705 (1946), is to ascertain what duty it was, the failure to perform, that constituted the crime, and what acts of the defendants constituted the violation in order to determine where the crime was committed.

Clearly the duty in each case was to report to the State hospital, the place of performance, in this judicial district. However we think the violation was the defendants' refusal to report to the place of performance. The refusal in both cases took place in the Western District of Pennsylvania, and not in this district where defendants were never physically present.[2] Penor v. United States, 9th Cir. 1948, 167 F. 2d 553, 555; United States v. Chiarito, D. C. Ore. 1946, 69 F. Supp. 317, 322-325.

Accordingly, the defendant's motion in each case to dismiss the indictment will be allowed for lack of jurisdiction.

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[1] Cf: Footnote 14 on page 705 of United States v. Anderson, 328 U. S. 699 (1946).

[2] See footnote 11 on page 704 of United States v. Anderson, 328 U. S. 699, in which the Court pointed out that "the Department of Justice in 1942 had instructed United States Attorneys that, in cases of failure to report for induction, 'venue is in the district where the subject was ordered to report', *apparently without regard to whether he had been present physically there.*" (Italics supplied.)